UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555 (JMP)

- -x

In Re:

LEHMAN BROTHERS HOLDINGS, INC., et al.,

Debtors.

- -x

Case No. 08-01420 (JMP) (SIPA)

In Re:

LEHMAN BROTHERS, INC.,

Debtors.

- x

United States Bankruptcy Court

Southern District of New York, Courtroom 601

One Bowling Green

New York, New York 10004

April 18, 2012

10:04 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

ECRO: MATTHEW

Final Fee Application of the Examiner and Jenner & Block LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses for Jenner & Block LLP [ECF No. 27189]

Second Motion for Order Approving the Trustee's Allocation of Property [LBI ECF No. 4760]

Motion of Fidelity National Title Insurance Company to Compel Compliance with Requirements of Title Insurance Policies [ECF No. 11513]

Motion of Giants Stadium LLC for Leave to Conduct Discovery of the Debtors Pursuant to Federal Rule of Bankruptcy Procedure 2004 [ECF No. 16016]

Motion of Monti Family Holding Company, Ltd for Leave to Conduct Rule 2004 Discovery of Debtor Lehman Brothers Holdings, Inc. and Other Entities [ECF No. 16803]

Amended Motion of Ironbridge Homes, LLC, et al. for Relief from the Automatic Stay [ECF No. 23551]

Motion of Edward J. Agostini, et al. for Relief from the Automatic Staty [ECF No. 24769]

Bank of Montreal's Responses and Objections to Subpoena of Debtors and Debtors in Possession Pursuant to Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure [ECF No. 24847]

Motion of Grace Farrelly Pursuant to Sections 105 and 362 for Relief from Automatic Stay [ECF No. 25205]

Cardinal Investment Sub I, L.P. and Oak Hill Strategic Partners, L.P.'s Motion for Limited Intervention in the Contested Matter Concerning the Trustee's Determination of Certain Claims of Lehman Brothers Holdings Inc. and Certain of Its Affiliates [LBI ECF No. 4634]

Lehman Brothers Holdings Inc. v. Fontainebleau Resorts, LLC, et al. [Adversary Case No. 10-02821] Status Conference

Lehman Brothers Holdings Inc. v. Fontainebleau Resorts, LLC, et al. [Adverysary Case No. 10-02823] Status Conference

Belmont Park Investments Pty Ltd, et al. v. Lehman Brothers Special Financing Inc., et al. [Adversary Proceeding No. 12-01045] Pre-Trial Conference

Transcribed by: Petra Garthwait

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P R O C E E D I N G S

THE COURT: Be seated. Good morning. Let's proceed.

MR. TROSTLE: Good morning, Your Honor. Patrick Trostle of Jenner & Block for the Examiner Anton Valukas.

I'm here this morning on our Final Fee Application for the Examiner and for Jenner & Block. I'm happy to say that we have resolved all issues with the Fee Committee. The Fee Committee, in fact, filed a statement of no objection on April 11th and no -- no objections were filed. We submitted a form of order to chambers earlier this week and I respectfully ask that our application be granted.

THE COURT: It is granted.

MR. TROSTLE: Great. Thank you, Your Honor.

THE COURT: Thank you. Well, that was quick.

MR. KOBAK: I hope we'll be as quick, Your Honor, but I'm not sure --

THE COURT: I don't think you will be.

MR. KOBAK: James Kobak, Hughes Hubbard & Reed, on behalf of the SIPA Trustee.

Your Honor, we're here today with respect to the scheduling for the allocation Motion. As Your Honor knows, Your Honor has reserved a number of dates in early August for a hearing on that Motion. We have proposed a schedule to the other parties, LBIE, LBHI, and the other objectors, looking

toward getting everything resolved in time to have a hearing in those August dates. I'm sorry to say that we've not been able to reach agreement with them on that schedule. We think it's reasonable, it is ambitious, but as I said before, this is an issue that the Trustee very much thinks we need certainty on. We're over three years into this case. As I understand it, their schedule essentially would call for a much longer period, perhaps to the end of this year till early next year. I'll let them speak to the details, if they wish, but from the Trustee's standpoint, we see no reason for that. We don't think it's acceptable. We do think that we need certainty. We've done everything possible to try to resolve the principle issues that are impediments to our knowing where we stand and making distributions either on an interim or a final basis, that includes moving forward with the schedule in the LIBIE case. It includes reaching a settlement, I think, we're still waiting for the documentation, but a settlement with LBHI, those are two of the other principle outstanding items, so -- our position, Your Honor, is that we think it's perfectly doable to go forward on -- in early August. We don't think we'll even need all five of those dates.

We think many of the questions are essentially legal in nature or mixed questions of law, in fact, we don't think what we're talking about is the Barclay-type trial with a lot a "who shot John" about what happened when. It's much more of a

matter that what we think professionals can efficiently agree on.

THE COURT: I appreciate what you said, but I gather not everybody agrees with what you just said.

MR. KOBAK: No, they don't, Your Honor. I think Mr. Wiltenburg may have one or two points to amplify a couple of details.

THE COURT: Okay.

MR. KOBAK: Thank you, Your Honor.

MR. WILTENBURG: Good morning, Your Honor, David Wiltenburg, Hughes Hubbard & Reed, for the SIPA Trustee.

Your Honor, this is the Trustee's Second Motion seeking allocation of property of the estate to the fund of customer property. This Second Motion was filed on December 1st of last year and in the interim since then, we have reported to the Court on a couple of occasions regarding the due diligence process that has been going forward involving professionals on all sides. And, in fact, substantial progress has been made, and what we're talking about essentially is continuing a dialogue as we have been doing, but putting in place procedures, kind of as a fail-safe that will result in a hearing on beginning on August 6 and, of course, this doesn't mean that the parties are at loggerheads, that they -- that they are sure that they are going to disagree it's just that, in the event we can't reach consensus on the remaining issues,

we need that date certain to put the issues before the Court.

THE COURT: Let me ask you -- what's probably a naive question: To the extent that the parties are at loggerheads with respect to such things as timing and process and recognizing that the August 6 date has been set, are any of the issues that are presently standing in the way of consensus, at least as to schedule, issues that could be addressed with the aid of a mediator? Or is this just one of those situations where reasonable people will differ and that difference will persist regardless of whom I get in the middle of it?

MR. WILTENBURG: Your Honor, I think we can identify two points of disagreement: The first is essentially the view of other parties that allocation should be the last piece of the puzzle that falls into place, that is that it should not be adjudicated until all issues affecting the size of the customer claims pool have been resolved. And we just disagree fundamentally with that. This -- the idea that this should be the very last piece of the puzzle to fall into place, it's an essential part of the administration of the estate, you know, fixing the amount of property that will be available on a priority basis to customers and the Trustee feels strongly that it needs to be -- it needs to be fixed in order for the estate to plan and to conduct itself in a logical way.

The other disagreement is as to the August date itself and the feasibility and practicality of keeping that

date as a time, as I say, as a fail-safe to put unagreed (verbatim) issues before the Court, and the characteristics of this discussion, I think, are not fully appreciated -- we're not on the same page with other parties about the characteristics of the exercise. First of all, this is not adjudication of the rights of any particular party. It's not an adversary proceeding, it's not that there is going to be adjudication that affects individual rights.

Secondly, it's not, as Mr. Kobak said, it's not the Barclay's Trial, in fact, it's essentially witnesses who are financial professionals having the knowledge that lay people would not have to assemble data and to interpret data and to explain it to us. And so the divide, you know, between fact witnesses and expert witnesses and testimony -- it's not a bright line in this case, in fact, all of the witnesses are going to be doing an exercise and explaining things to us in a way that a lay person needs help --

THE COURT: You say "explain this to us", are you talking about explain this to the Court?

MR. WILTENBURG: Yes.

THE COURT: As you have just described this and consistent with my earlier comment about a mediator, it occurs to me, and I'm just throwing this out as a question, not necessarily even a pointed question, that this maybe a situation in which the Court may be well-advised to have its

own expert, because I'm not at all clear how a lay individual, and I am one although I have reasonable sophistication in these matters, is supposed to make an assessment that the parties themselves are unable to make and they are all armed with their own experts. You don't have to answer that on the spot, but it does occur to me that this may be one of those unusual circumstances where the appointment of an expert for the Court may turn out to be a useful device because that individual would be somebody who could provide some presumably totally neutral and dispassionate advice, would be in a position to confer presumably with the Court at some level, and would also be in the position to act as a "honest" broker with respect to some of the disagreements.

MR. WILTENBURG: Your Honor, if I could make a comment on that based on the experience we've had so far and, I think I've mentioned before that, on the level, on the kind of transactional level, the parties have agreed so far and we expect they will agree they're -- that is they're professionals -- will look at the body of data and say yes on a transactional level, this is what happened. And the question before the Court, we anticipate, will not be so much what happened but what the legal consequences --

THE COURT: I hear what you said but you haven't answered my question.

MR. WILTENBURG: Well, in a way I'm expressing based

on what's gone before, the aspiration and expectation that we will not be experiencing that kind of clash -- battle of experts, in effect.

THE COURT: Well then, what will be before the Court?

MR. WILTENBURG: Well, the legal consequence of what occurred.

THE COURT: Are you saying that there will be what amounts to an agreement as to a factual record and as to the financial components thereof?

MR. WILTENBURG: I'm not able to tell you today that that will for sure happen. It will be our hope to get close to that.

THE COURT: All right, well, I just threw out an idea and it may be that it's something that the parties might think about. I'm not urging it and I don't have enough of a under -- I don't have enough of a present understanding of the nature of what is causing the parties so much agitation at the moment. I can't tell from your comments and those of your partner, since you both suggest that this is a matter that should be handled in August then it's obvious that adversaries who are looking at the same set of facts completely disagree with you.

MR. WILTENBURG: Yes, Your Honor, that -- at least for now -- that is the case. The parties have exchanged

proposed schedules. We are proposing a schedule that gives all parties notice of who the witnesses would be, what they would say, an opportunity to take document and deposition discovery of those witnesses and those issues and then tee it up for determination by the Court, if necessary, by August 6th and we do feel that that is feasible.

THE COURT: Okay, I should hear from others because I need to understand why that's not feasible.

MR. GRAULICH: Good morning, Your Honor, Timothy Graulich of Davis Polk on behalf of the administrators of Lehman Brothers International Europe and Administration.

Your Honor, before -- before I get to a position of discussing specifically why August is not correct vs. September or October, I would just like to take a few steps back and put on the record, what I think is both ours and the chapter 11 Debtors' position that first and foremost, we should not be talking about scheduling the balance of this Motion at this time. And, I would like to sort of begin with one of the comments of Mr. Wiltenburg with respect to -- we should proceed because the Trustee would like to proceed and after all, I think the phrase was "no individual rights are being affected, it's not like this is an adversary proceeding". Sitting at this table here is North of 70 percent of the allowed customer claims in this case. That's likely to be true even at the -- it's true now, but it's likely to be true that we're going to

be a significant -- the largest two creditors -- customers in the case at the end of this proceeding as well. And so to the extent that there is a difficulty with respect to the customer fund, it's going to fall on customers most importantly, not necessarily -- not at all frankly, on the Trustee. Just as a for example, if the Trustee proceeds presently with its contested Motion and loses, for example, there are certain non-trivial amounts that are still subject to dispute at this point, approximately $3.5 billion. If there is a shortfall in the customer fund because the Trustee decided that it's in the Trustee's best view to proceed immediately to a hearing in August and then fails, if there is a 10 percent shortfall in the customer fund, my clients and their customers are out $800 million, because we have an already agreed 8.2 billion customer claim which we are -- to be sure, we're in litigation about but not from LIBIE's perspective to make that number smaller, only to make that number larger.

So it is not at all true that this is an academic exercise that the Trustee should properly be pressing forward with at this time over the objection of the very customers that presumable the Trustee is acting in the interest of because we need to get this moving. The customers are speaking and the customers don't want to move forward at this point.

What we would propose, and just by the way of background where we are right now is, and, we discussed this a

little bit at the last hearing, is that a Motion was filed in December, in paragraph four of that Motion, why was this being filed now, paragraph four indicated "to help facilitate an interim distribution during calendar year 2012", indicated perhaps earlier than 2012 but let's take as a base line an interim distribution in 2012. The parties at the table here -- whereupon -- looked at the Motion and said "let's try and get the largest possible agreed base line basement allocation in order to facilitate that interim distribution" and we've been at conceptual agreement with respect to some 13.8 billion now for quite some time just basically waiting on the Trustee and this is not a complaint in any sense, it's just how complicated and how many documents are involved waiting for further clarification with respect to almost two billion of that. So there is no conceptual dispute, but we're not here signed off on that number yet because even after four months of informal very cooperative, very collaborative process, we don't have all the documents yet to sign off on that. But we trust and hope that we'll be able to be in a position of 13.8 in the not so distant future. What is left here is -- what is left here -- and I referred to this last time as the sort of 80/20 rule -- 80 percent conceptual agreement. The 20 percent for which there is disagreement is considerable. In fact, it's so considerable that there is a disagreement not -- it's not even -- we're not even at the level yet where it's obvious that

there is a disagreement about specific aspects of the allocation. We're at a disagreement about the entire process at this point on that 20 percent and from the -- from LIBIE's perspective, what that is, well if you filed at this point, we're not saying defer allocation finally the very last thing in the case. It's just that the predicate for filing the Motion when it was filed and trying to progress it the way it's been progressed, at least according to the Motion was to facilitate an interim distribution. There is a significant -- there will be a significant -- pot of property for distribution to creditors so we've asked the question "why now?" because, to a certain extent, the folks at this table are scratching their hair, why now, why August, what is -- so talismanic about August that we need to proceed in August and, maybe it has something to do with the interim distribution but it's still -- that's not what we're necessarily hearing.

Previously, we -- at the last hearing when we questioned whether or not it was appropriate to proceed via term we believe counsel indicated that, well, we really need that extra $3.5 or $3.4 billion of property in order to facilitate an interim distribution, because (1) there was hundreds, if not thousands of CUSIPs involved in the interim distribution. I thought from those comments that the suggestion was is that many of those CUSIPS were in the assets that we were looking to defer and that would create a problem

for an interim distribution presumably, if the Trustee is thinking about making an interim distribution in kind. Upon further clarification from the Trustee, it appears that the assets that are in the sort of disputed category, are entirely or almost entirely cash, so if there is a complication, and I don't doubt that there is, this is probably going to be an extraordinarily complicated undertaking for the Trustee to make an interim distribution, but I don't believe it's made any more complicated because there is $3.4 billion worth of cash not in the pot right now.

Secondly, there was a suggestion more recently that, well, you know, the distribution is going to be very small without this 3.4. Doing some, you know, math -- you know, back-of-the-envelope math, it's hard to see that considering the fact that there is already of this 13.8 billion to be agreed that equals or exceeds the amount of allowed customer claims in the whole case and the LIBIE 8.2, 8.3 wouldn't even participate in this interim distribution on account of the fact that our claims are under dispute. So really, I think, the guiding issue with respect to the quantum of an interim distribution, really isn't even the size of the -- the customer pool above 13.8 really at all, it's the size of the reserves that could affect that and obviously, we looked at that, one of the largest reserves in the case would need to be for LIBIE, and we've made an offer to the Trustee, why don't we have a

bilateral discussion about reserves, about our own reserves so we can potentially facilitate an interim distribution in your case. We would love for those -- discussions to be reciprocal, because to a certain extent, while there is differences between the UK proceeding and the U.S. proceeding, we are a little bit mirror images of each other. They want to make an interim distribution this year, we want to make an interim distribution this year. What you would need to resolve -- reserve for LIBIE can affect the quantum of that distribution, what LIBIE needs to resolve for LBI in London can affect what that distribution would look like and so, there are certainly ways of helping to improve the distribution here and we're prepared to have those discussions with the Trustee, because what we really want to avoid is having, particularly in August, but frankly I think it's from our perspective -- this is not a question of should it be in August or should it be in September or should it be in October, it's a question of should we have this hearing at all, because right now, we've had an extraordinarily collaborative and productive process. We think that ought to continue, because if you stop that process too early, you're going to force people to fight where there may not be a fight. Nobody on this side of the table has told the Trustee that there is actually an issue that we're convinced is going to be the subject of an objection; however, if you say arbitrarily, we need to have your final answer by August before there is more

clarity in the size of the customer pool, you may well be encouraging people to object when they otherwise wouldn't and -- - that's my -- from my client's principal concern here is -- is that if this earlier than necessary, we would submit, process induces objections that perhaps are meritorious, it's not the Trustee that loses on that, although the Trustee would be, you know, the person bringing the litigation, it would be the customers that could lose on that and the customers don't want to see this proceed.

The customers believe, or at least LIBIE and LBHI believe, that we should continue this process, perhaps schedule another status conference before Your Honor in a couple of months to see if we've made some progress, once we can pivot off of the 13.8 to focus on the balance, and to allow principally LIBIE and LBI, to talk reciprocally about the size of an appropriate reserve here, because frankly, if the goal here is to make an interim distribution, having a hearing scheduled for later is almost more risk to an interim distribution than right now.

Right now, the hope and expectation is, is you can have an order, an interim order, for 13.8 that would be basically able to be entered on consent with the ability to -- and set that as a floor, if there is going to be litigation, there is the risk of loss, there is the risk of appeal, there is a risk of delay because we do honestly believe that August

is unreasonably short and so, you're really putting at risk the interim distribution by trying to make it the perfect interim distribution.

And so, for all those reasons we would ask, not that we have a conversation today about August versus September, but really whether or not this should be proceeding at all. We can come back in June or July, continue this process that, I think, all parties have -- are on the same page -- it has been a very productive process and I would report to Your Honor if we've made some progress and if people think at that point it's appropriate to try and schedule something, then so be it, but right now the idea of setting aside a week in August when the parties can't even discuss what the -- what even -- it's not even -- we're not even at a dispute yet about the bona fides of the Motion, we're in a dispute about how to even proceed from here and one last point, Your Honor, is that it's not even clear that -- what we would even be litigating about, because we understand that the Trustee is preparing to supplement this Motion and change the basis for, or at least change the manner in which the business mix test, which is one of the two principal area of dispute legally, would be applied, so we don't even know how the Trustee would be attempting to apply that test so the idea that we would be talking today about trying to set a hearing or set aside dates, to LIBIE, seems very premature.

THE COURT: All right. Thank you for that. I don't know if others wish to add anything to what has just been said.

MR. KRASNOW: Your Honor, Richard Krasnow, Weil Gotshal Manges, on behalf of the Debtors.

I think, the way Mr. Graulich articulated it, it's two issues and the first is whether or not it would be appropriate to defer what we hope will be the remaining issues after we've been able to complete all of the requisite due diligence of the 13.8, and we're not just there quite yet on the 13.8, although we are there on most of it, is the first issue and that is, should this just be deferred? And then the second issue is, if it's not going to be deferred, is August appropriate? And, I think, certainly as to the first issue, we concur with what Mr. Graulich has said. We think it would be a lot easier for the parties to evaluate what their position will be on the remaining issues, once there has been more clarity on the theories behind those issues. When there is a better consensus as to what the customer claim is, it's a lot easier to evaluate what position one is going to take on customer property issues, when one does it in a non-abstract way and unfortunately, because of primarily, although not completely, but primarily the remaining disputes that exist with respect to the LIBIE claims, because we do envision that we will be before the Court in the not too distant future with respect to the settlement in principle between ourselves and the Debtor, that

until there is more clarity on that, this is somewhat of an academic exercise.

And, so I think, that's the first issue and rather than addressing our issues unless the Court wants me to about, if we're going to go forward, is August appropriate, I think -- which we don't think it is -- and at the last hearing while August was set as date, kind of in pencil, Your Honor may recall that at that time, I didn't think that was realistic and I continue to be of that view and I can get into details on that, if Your Honor wants me to at this point.

THE COURT: I don't think there is a need to get into it again, but if there is something new you want to add, that's fine.

MR. KRASNOW: I -- The only point I would make, Your Honor, is that it's taken us four months with respect to a category of assets as to which we have conceptually said "gee, by category, we should be there" and there has been absolute cooperation and we're there for the most of it, but we're still not there on the 13.8, and there has been no focus whatsoever by any of the parties on the remaining issues. And to suggest that we could complete everything that would need to be done for a trial in early August, if there is going to be -- if there isn't going to be a general deferral -- there is no resemblance in our view to reality and we've proffered something to the Trustee's counsel, a proposal. We have

indicated in that regard that we are more than willing to discuss the proposed dates. They have indicated to us that they thought that our proposal would result in a trial in 2013, that was not the objective, but the speed with which the discovery could proceed in terms of our proposal was to a certain extent premised on how long it would take for documents to be produced because, while I agree with Mr. Wiltenburg that we would certainly endeavor to continue the kind of informal process that we have been undertaking with respect to the 13.8, if there is going to be a trial, you got to overlay that with a formal process to prepare for a trial and -- we're just not there yet - and again, if Your Honor wants to go into the details on what our proposal vs. their proposal, I'm happy to defer to --

THE COURT: I don't think I --

MR. KRASNOW: Mr. Levine in that regard --

THE COURT: I don't think there is any need for that, although there may be a need for a chambers' conference.

MR. KRASNOW: That -- there was a discussion amongst the parties about -- that approach -- and, Your Honor, to answer a question you asked of Mr. Wiltenburg about an expert for the Court, it is premature -- I don't think I could say "no", I think that while I wouldn't lose the Barclay's trial as a template and --

THE COURT: I wouldn't use that as a template for

anything.

MR. KRASNOW: I don't think this is anything like that but to suggest today that this is going to be simple and there really will be no factual issues, significant factual issues that may be in dispute, might not, if we could look at this, as I said, in the context of, you know, we're the costumer claims, and compare that, but if we -- if we're not going to defer it, to say that there isn't going to be significant factual dispute when we haven't commenced formal or informal discovery on some of these issues, is again, it's a little premature, but there may be an advantage to the Court, where there to be a court-appointed expert in that regard and I think certain -- we, on behalf of the Debtors, will be prepared to discuss that further with the Trustee, because it might help facilitate a trial, if there is a trial on this and, Your Honor again, it may well be that, as we get involved in both a formal and an informal process here, once we have a better understanding of the facts, we may well stand up before the Court and say "we don't have an issue" or "we've narrowed the issues substantially" or "we've collectively come up with a different number that we think makes sense" so, there are a whole bunch of alternatives here, none of which in our view are achievable in the context of an early August trial.

Thank you, Your Honor.

THE COURT: Okay. Mr. Etkin?

MR. ETKIN: Thank you, Your Honor.

THE COURT: I just want to be clear that it's permissible for you to be speaking to me at this point.

MR. ETKIN: It is.

THE COURT: Okay.

MR. ETKIN: Thank you, Your Honor. I don't want to stand in the way of a chambers' conference, but I just -- the record is a little incomplete -- for the record, Michael Etkin, Lowenstein Sandler, on behalf of the various Liberty View funds.

We are, I believe, we are, Your Honor, one of the parties identified in the Agenda that -- where our -- our objection deadline has been extended and we've -- haven't been lying in the weeds, we've been discussing things with the Trustee's office. I just want to make it clear that the Trustee has not shared any draft proposals with us, although we twice requested being included in those discussions, those requests have fallen on deaf ears, so to the extent that there have been discussions among the parties, I think the record should be clear as to who those parties are, it's not everyone who has either spoken to the Trustee or filed objections in connection with the Motion, perhaps the parties simply includes the Trustee, LIBIE, and the Chapter 11 estates. You know, I don't know what the game plan is on the Trustee's part, maybe if the Trustee believed he gained consensus with those parties,

then the balance of customers whether disputed or not who have weighed in would be standing in front of the 60 mile/hour train, having the necessity of facing consensus between the various 600 pound gorillas in the case, but we have not -- there has been no proposal shared with us. There have been no discussions with us concerning a proposal despite our being -- despite our asking for that and, just quickly, Your Honor, in hearing Mr. Graulich's presentation, from our perspective, it does make conceptual sense to us, given the issues or potentially, lack of issues in the case and we are a large customer claimant, albeit disputed at this stage, but we see -- we see the wisdom in the approach that Mr. Graulich outlined, but in terms of commenting on a proposal or a scheduling order, we have nothing to comment on at this stage.

THE COURT: Okay. Is there anyone else who wants to say anything?

This is -- Mr. Kobak, do you have any thoughts?

MR. KOBAK: Yes, Your Honor, I just wanted to say a couple of things.

We don't see this as an academic exercise in any sense. In addition to the objectors, there are approximately a thousand claimants who do have an interest and are achieving certainty, knowing what assets are in the customer pool, both for interim distributions and for permanent distributions, when we're in a position to make that. I don't think we can just

keep kicking this can, this issue, down the road. I think, one reason that we've been able to make progress on getting near to agreeing on the 13.8 is because we have a Motion pending and whether August is the date or September is the date, I don't think is really the question, but I do think we need a con -- certain to get this Motion on the calendar, to get as many issues resolved as possible. I don't see why having it in a somewhat litigation mode, which in a sense it's always been in since it is a contested matter, doesn't mean that we can't continue to have the kind of constructive dialogue where it's appropriate that we have been having with the claimants.

I want to say about LIBIE that I don't know how long it's going to take their resolve -- to resolve their claims. Most of the other claims that are not affiliate claims have now been resolved or are in the process of being resolved in this case. LIBIE's claim -- they talk about being $8.2 or $8.3 billion -- we all use that figure but it's important to note that that was conditionally allowed and the claim could be lower than that as well as higher, I just want to say that for the record. It will clearly be a very substantial claim, but in any event, I -- we need a date certain -- I think, to put this Motion on. I think that's the way the parties are going to make progress. As to this suggestion about an independent -- a court-appointed expert, frankly, that's not something we've thought of before today so we'll certainly take it under

consideration, talk to the other parties, talk to SIPC about it, we just had not focused on that and it might well be a very constructive suggestion, if -- if we're at a point where we need it.

Thank you, Your Honor.

THE COURT: Something more?

MR. GRAULICH: Your Honor, 30 -- just 30 seconds, Your Honor?

THE COURT: Sure.

MR. GRAULICH: I just want to respectfully take issue with just one thing Mr. Kobak just said, which is that, perhaps it's been the fact that there has been a Motion pending that is, you know, brought the people -- the parties -- together and that perhaps, setting a deadline will help us get together faster. I think it's actually quite the opposite. It was the fact that we were able to work together cooperatively at -- at a pace that was appropriate to the magnitude of the dispute and that was appropriate based upon everybody's experts to -- and there's been a -- there has been a lot of work, despite the fact that there hasn't been a single bit of formal discovery -- a lot of work between lawyers, professionals, just the professionals speaking to try and work cooperatively to this, if particularly, if we're going to end up with a date that, I think, is too close, I think, even though you can always use the phone and the door is always open, it's going to

revert almost immediately to a litigation posture because, for example, if we were to ask for a document now and there is a dispute about whether or not we're entitled to that document, we know that we'll have a informal process to speak with counsel, maybe they can convince me that I don't need the document, maybe they have a different document that would be just as helpful and based upon that give-and-take, we don't have any disputes. Frankly, we've been -- LIBIE and the Trustee -- have been discovering with respect to LIBIE's claim for months now, many, many months. And, we haven't come to document Your Honor's view with respect to any discovery disputes, not because their hasn't been periodic differences of opinion --

THE COURT: You're always welcome, you know --

MR. GRAULICH: -- but because the schedule has enough, given the joints, such that, you know, if we propound a particular request or a particular request is propounded upon us and there is a dispute, there is meet-and-confer process, there is time in the schedule. If -- and I think this goes -- if it's August, if it's September, if it's October, what you're going to be doing is changing this very, very cooperative, productive process to one where everybody's got to rush to the Court if there is a five second delay in distributing a document and, I don't think that's helpful. I think this has actually been, for as long as I've been in this case at least,

the most cooperative point in LBI's history between the various LIB -- Lehman estates, so I would hate to see a wedge sort of forced in here unnecessarily.

Again, if there is a valid reason why this has to take place other than it's better for it to be done than not done, then so be it, but we haven't heard -- heard a response that we're convinced of and we -- I know there is a lot of small creditors here and we hope that they can be taken care of in a robust interim distribution. The large creditors are not sold that this needs to take place at this time.

THE COURT: Thank you.

Okay, this is a problem that's difficult to resolve in this setting. I think a chambers' conference may be in order and I'm going to propose that the principal players -- and for these purposes, I'm going to let the principal players identify themselves -- and that would be the Trustee, LIBIE, the Lehman estates plus, to the extent there are any active litigants in this process -- some others -- through counsel to come up with some dates over the next several weeks. One, we can get together and have a "sleeves-rolled-up" session to discuss some of the things we've talked about at least, preliminarily today -- were things that makes this somewhat unusual for me in terms of a scheduling decision is that I have a Trustee who has fiduciary duties to customers plus I have customers and they are not seeing eye to eye as to what is in

the best interest of the customers. That's a conundrum and I don't have a record on the basis of which to determine whose assessment of this murky reality is correct. I'm not sure I am going to have any better sense of that in the context of a chambers' conference but it may be that we can talk somewhat more creatively about the problem. We can talk about dates that actually do make sense to the extent that August does not make sense. We can consider whether holding the August date for some purpose may be sensible, and we can also consider whether the suggestion I've made about the possible value of a court expert actually makes sense in the context of the dispute and just because I've said it doesn't mean I have a considered view on that subject. It was just a point for consideration.

Let me have some ideas from you as to what's most convenient over the next several weeks and we'll try to set something up and you can coordinate with a chambers' staff.

MR. GRAULICH: Your Honor, just -- Timothy Graulich for the record -- just a thought, I don't know that I've spoken with anybody about this, because we just -- we were discussing just this morning the possibility of a chambers' conference, I just throw it out as a possibility and we can speak amongst ourselves as to whether or not it may be helpful to Your Honor, for folks to maybe submit a letter in advance of the chambers' conference sort of laying out some of these issues, just so there is something in writing for Your Honor to consider --

THE COURT: Having such and foremost admissions as the parties think would be useful in making the session more productive would be welcome.

MR. GRAULICH: -- Okay. Maybe, it may not be a great idea or it may be a great idea, but we'll discuss it.

THE COURT: It's just more work for you.

MR. GRAULICH: More work for Mr. Millerman.

THE COURT: Okay, we'll -- fine. It's more work for somebody. I'll see you next time. Thank you.

(Whereupon these proceedings were concluded at 10:51 AM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Petra Garthwait, certify that the foregoing transcript is a true and accurate record of the proceedings.

Petra Garthwait

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